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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,497	10/24/2002	Haren S. Gandhi	FCHM 0104 PUS / 201-0553	9077
28395	7590	11/28/2005	EXAMINER	
BROOKS KUSHMAN P.C./FGTL 1000 TOWN CENTER 22ND FLOOR SOUTHFIELD, MI 48075-1238			JOHNSON, CHRISTINA ANN	
			ART UNIT	PAPER NUMBER
			1725	

DATE MAILED: 11/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/065,497

Applicant(s)

GANDHI ET AL.

Examiner

Christina Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 9/20/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20,31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20,31 and 32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 20, 2005 has been entered.

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-20 and 31-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Sung et al.

Sung et al. (US 6,087,298) discloses a catalyst apparatus comprising an upstream catalyst and a downstream catalyst, each having a first and second layer, useful in the purification of exhaust gas. It is taught that a useful and preferred first

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upstream layer has: from about 0.003 to about 0.6 g/in<sup>3</sup> of at least one palladium component; from 0 to about 0.065 g/in<sup>3</sup> of at least one first platinum and/or first rhodium component; from about 0.15 to about 2.0 g/in<sup>3</sup> of a first support; from about 0.05 to about 2.0 g/in<sup>3</sup> of the total of the first oxygen storage components in the first layer; from 0.0 and preferably about 0.025 to about 0.5 g/in<sup>3</sup> of at least one first alkaline earth metal component; from 0.0 and preferably about 0.025 to about 0.5 g/in<sup>3</sup> of a first zirconium component; and from 0.0 and preferably about 0.025 to about 0.5 g/in<sup>3</sup> of at least one first rare earth metal component selected from the group consisting of ceria metal components, lanthanum metal components and neodymium metal component (column 11, line 64 – column 12, line 13).

It is taught that a useful and preferred second upstream layer has: from about 0.003 g/in<sup>3</sup> to about 0.6 g/in<sup>3</sup> of at least one second palladium component; from 0.0 g/in<sup>3</sup> to about 0.065 g/in<sup>3</sup> of at least one first platinum and/or rhodium component; from about 0.15 g/in<sup>3</sup> to about 2.0 g/in<sup>3</sup> of a second support; from 0.0 and preferably about 0.025 g/in<sup>3</sup> to about 0.5 g/in<sup>3</sup> of at least one second rare earth metal component selected from the group consisting of lanthanum metal components and neodymium metal components; from 0.0 and preferably about 0.25 g/in<sup>3</sup> to about 0.5 g/in<sup>3</sup> of at least one second alkaline earth metal component; and from 0.0 and preferably about 0.025 to about 0.5 g/in<sup>3</sup> of a second zirconium component (column 12, lines 14-30).

It is taught that the first layer requires an alkaline earth metal component and/or a rare earth component, and the second layer requires an alkaline earth metal component and/or a rare earth metal component (column 12, lines 30-35). The first and/or second

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layer can have from 0.0 to about 2.0 g/in<sup>3</sup> of an oxygen storage composite comprising particulate form of ceria-zirconia composite (column 12, lines 35-38). The first upstream layer can be supported on a substrate, preferably a honeycomb carrier, and the second upstream layer is supported on the first upstream layer applied on the substrate (column 12, lines 40-45).

Next, the reference teaches a useful and preferred first downstream layer has: from about 0.0175 to about 0.3 g/in<sup>3</sup> of palladium component; from about 0 to about 0.065 g/in<sup>3</sup> of a first platinum component; from about 0.15 to about 2.0 g/in<sup>3</sup> of a first support; from about 0.025 to about 0.5 g/in<sup>3</sup> of at least one first alkaline earth metal component; from about 0.025 to about 0.5 g/in<sup>3</sup> of a first zirconium component; and from about 0.025 to about 0.5 g/in<sup>3</sup> of at least one first rare earth metal component selected from the group consisting of ceria metal components, lanthanum metal components and neodymium metal component (column 15, lines 5-22).

It is further taught that a useful and preferred second downstream layer has: from about 0.001 g/in<sup>3</sup> to about 0.03 g/in<sup>3</sup> of a rhodium component; from about 0.001 g/in<sup>3</sup> to about 0.15 g/in<sup>3</sup> of platinum; from about 0.15 g/in<sup>3</sup> to about 1.5 g/in<sup>3</sup> of a second support; from about 0.1 to 2.0 g/in<sup>3</sup> of a second oxygen storage composition; from about 0.025 g/in<sup>3</sup> to about 0.5 g/in<sup>3</sup> of at least one second rare earth metal component selected from the group consisting of lanthanum metal components and neodymium metal components; and from about 0.025 to about 0.5 g/in<sup>3</sup> of a second zirconium component (column 15, lines 23-37). It is taught the first downstream layer can be

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supported on a substrate, preferably a honeycomb carrier, and the second downstream layer is supported on the first layer applied on the substrate (column 15, lines 40-45).

The reference teaches that hydrogen sulfide suppressants, such as nickel or iron oxide, may be added to either the upstream or downstream catalyst composition (column 23, lines 25-35 and column 30, lines 63-67).

With respect to claims 1-20 and 31, the upstream catalyst is considered to meet the first catalyst, with the first upstream layer corresponding to the claimed second zone and the second upstream layer corresponding to the first zone, and the downstream catalyst is considered to meet the second catalyst. With respect to claims 21-30, the upstream catalyst is considered to meet the first catalyst, with the first upstream layer corresponding to the claimed bottom layer and the second upstream layer corresponding to the top layer, and the downstream catalyst is considered to meet the second catalyst. With respect to claim 32, the first upstream layer is considered to correspond to claimed second zone, the second upstream layer is considered to correspond to the first zone, and the downstream catalyst is considered to meet the the third zone.

As each and every element of the claimed invention is taught in the prior art as recited above, the claims are anticipated by Sung et al.

3. Claim 31 is rejected under 35 U.S.C. 102(b) as being anticipated by EP 1 108 863.

EP 1 108 863 discloses a catalyst composition useful in the purification of exhaust gases. With reference to Example (page 7), the reference teaches the

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preparation of a closed coupled three-way catalyst (TWC) and a NOx reducing catalyst.

The closed couple TWC comprises the noble metals, Pt, Pd, and Rh, and Ce and Zr carried on an activated alumina powder, coated on a monolithic substrate. The NOx reducing catalyst comprises Pd-carried alumina, Pt-carried alumina, and Rh-carried alumina coated on a monolithic substrate which further contains cesium oxide. The NOx reducing catalyst does not contain CeO<sub>2</sub>. It is taught that the NOx reducing catalyst was disposed downstream of the closed coupled TWC (page 7, lines 55-59). With respect to the language of the claims, the closed coupled TWC is considered to meet the claimed first zone and the NOx reducing catalyst is considered to meet the claimed second zone.

As each and every element of the claimed invention is taught in the prior art as recited above, the claims are anticipated by EP 1 108 863.

4. Claim 31 is rejected under 35 U.S.C. 102(e) as being anticipated by Deeba et al.

Deeba et al. (US 6,375,910) discloses a catalyst composition useful in the purification of exhaust gas. With reference to Example 1 (columns 18-19), the reference teaches a multi-zoned catalytic trap F prepared by juxtaposing catalytic trap C and catalytic trap E having the following compositions:

	Catalytic Trap C	Catalytic Trap E
Bottom Layer:	Pt: 60 g/ft <sup>3</sup> Rh: 15 g/ft <sup>3</sup> NOx sorbent: 0.15 g/in <sup>3</sup>	Pt: 30 g/ft <sup>3</sup> Rh: 5 g/ft <sup>3</sup> NOx sorbent: 0.15 g/in <sup>3</sup>

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	BaO, 0.10 g/in <sup>3</sup> CeO <sub>2</sub> -ZrO <sub>2</sub> , 0.08 g/in <sup>3</sup> ZrO <sub>2</sub>	BaO, 0.08 g/in <sup>3</sup> ZrO <sub>2</sub>
Top Layer:	Pd: 90 g/ft <sup>3</sup> NOx sorbent: 0.20 g/in <sup>3</sup> BaO, 0.25 g/in <sup>3</sup> CeO <sub>2</sub> -ZrO <sub>2</sub> , 0.08 g/in <sup>3</sup> ZrO <sub>2</sub>	Pd: 50 g/ft <sup>3</sup> NOx sorbent: 0.25 g/in <sup>3</sup> BaO, 0.08 g/in <sup>3</sup> ZrO <sub>2</sub>

With respect to the language of the claims, Trap C is considered to meet the claimed first zone and Trap E is considered to meet the claimed second zone.

As each and every element of the claimed invention is taught in the prior art as recited above, the claims are anticipated by Deeba et al.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-20 and 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sung et al.

The teachings of Sung et al. (US 6,087,298) are as described above for claims 1-32. If it is considered that the disclosure of Sung et al. is not sufficiently specific to constitute anticipation within the meaning of 35 USC 102(b), then a rejection under 35



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USC 103(a) is applicable. In this case, the reference does not disclose the exact amounts of the components required by the instant claims, although Sung et al. discloses ranges of components which overlap the composition instantly claimed. With respect to the encompassing and overlapping ranges previously discussed, the subject matter as a whole would have been obvious to one of ordinary skill in the art at the time of invention to select the portion of the prior art's range which is within the range of the applicants' claims because it has been held prima facie case of obviousness to select a value in a known range by optimization for the results. *In re Boesch*, 205 USPQ 215. Additionally, the subject matter as a whole would have been obvious to one of ordinary skill in the art at the time invention was made to have selected the overlapping portion of the range disclosed by the reference because overlapping ranges have been held to be a prima facie case of obviousness. *In re Malagari*, 182 USPQ.

### ***Response to Arguments***

Applicant's arguments filed September 20, 2005 have been fully considered but they are not persuasive.

Applicant argues that the claimed zoned catalyst structure distinguishes the claims over the layered catalyst structure taught by Sung and further argues that such is made clear by the instant specification. However, the instant specification describes the catalyst structure, for example, during the Brief Summary of Invention, stating: "The catalyst system can be a single catalyst having multiple catalyst zones or layers or a combination of two or more catalysts. Irrespective of whether one zoned/layered

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catalyst or two separate catalysts are used to create the catalyst system of this invention, the end result is the same. The catalyst system is designed to maximize the reduction of engine emissions under both stoichiometric and lean conditions.

Accordingly, a first zone/layer or catalyst is designed to optimize NO<sub>x</sub> reduction under lean conditions, and convert HC, NO<sub>x</sub> and CO under stoichiometric conditions. A second zone/layer or catalyst is designed to function similar to other catalysts which convert HC, CO and NO<sub>x</sub> under stoichiometric conditions." Therefore, the instant specification does not define a zoned system as excluding layered systems and there is nothing in the language of the claims or the specification which would preclude each of the layers of the Sung catalyst from meeting the claimed zones.

Applicant further argues that the claimed zoned system functions better than a layered system. However, no evidence has been presented to support this assertion. Further, as discussed above, the instant claims do not preclude a layered structure. Therefore, this argument is not commensurate in scope with what has been claimed.

Applicant further argues that Sung et al. teaches a three way catalyst composition while the instant claims require a NO<sub>x</sub> trapping catalyst. This argument has been considered but is not persuasive. The difference in functions between the two compositions are noted by the examiner. However, the compositions appear to be structurally identical. Therefore, the difference in function is not sufficient to distinguish over the prior art. Applicant has not shown how the instant catalyst differs structurally from the catalyst of the prior art.

Applicant further argues that the Sung reference does not disclose a first zone which is devoid of cerium. However, the reference does not require cerium – lanthanum or neodymium may be used. Therefore, Sung et al. discloses embodiments which anticipate or obviate the instant claims.

Applicant argues that the Sung reference teaches away from the claimed invention because the reference discloses multiple embodiments, wherein some of the embodiments fall outside of the scope of applicant's claims. This argument has been considered but is not persuasive. The Sung reference discloses embodiments which anticipate or obviate the instant claims. The reference discloses ranges which overlap ranges instantly claimed. Further the reference includes all of the elements which are required by the claims. This the disclosure of Sung when taken as a whole contains embodiments which render the claims anticipated or obvious.

With respect to the rejections over the EP reference, applicant argues that the reference fails to teach one single catalyst having two zones. However, as discussed above, the closed coupled TWC is considered to meet the claimed first zone and the NOx reducing catalyst is considered to meet the claimed second zone. Applicant argues that in the context of claim 31, only 1 catalyst is claimed. However, there is nothing in the language of the instant claims which would preclude the arrangement taught by the EP reference.

With respect to the Deeba et al. reference, applicant argues that the references do not teach a two zone catalyst. However, Deeba et al. specifically teaches Trap F which meets the two zones claimed. Applicant argues that the second zone of Trap F

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does not contain rhodium. However, Trap E contains rhodium. Therefore, the composition taught by the reference would meet the instant claims. Applicant argues that in the context of claim 31, only 1 catalyst is claimed. However, there is nothing in the language of the instant claims which would preclude the arrangement taught by the Deeba et al. reference.

### ***Conclusion***

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

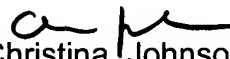
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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christina Johnson whose telephone number is (571) 272-1176. The examiner can normally be reached on Monday-Friday, 7:30-5, with Alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dunn can be reached on (571) 272-1171. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Christina Johnson  
Primary Examiner  
Art Unit 1725

11/18/05

CAJ  
November 18, 2005